FILED

00-597 OCT 16 2000

OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

ALTADIS U.S.A. INC., AS SUCCESSOR TO CONSOLIDATED CIGAR CORPORATION AND HAVATAMPA, INC.; GENERAL CIGAR CO., INC.; JOHN MIDDLETON, INC.; LANE LIMITED, AS SUCCESSOR TO TOBACCO EXPORTERS INTERNATIONAL (USA) LTD.; L.J. PERETTI CO., INC.; SWEDISH MATCH NORTH AMERICA, INC.; SWISHER INTERNATIONAL, INC.

PETITIONERS,

V.

THOMAS F. REILLY, ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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119 pp

QUESTION PRESENTED

Whether Massachusetts' content-based prohibition on virtually any public display of cigar advertisements violates the First Amendment, either under the strict scrutiny standard that Petitioners contend is applicable or under the test set forth in *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557 (1980).

PARTIES TO THE PROCEEDING

The petitioners in this case are Altadis U.S.A. Inc.; General Cigar Co., Inc.; John Middleton, Inc.; Lane Limited; L.J. Peretti Co., Inc.; Swedish Match North America, Inc.; and Swisher International, Inc. Altadis U.S.A. Inc. is the successor to Consolidated Cigar Corporation and Havatampa, Inc. Lane Limited is the successor to Tobacco Exporters International (USA) Ltd. The respondent is Thomas F. Reilly, Attorney General of the Commonwealth of Massachusetts. A separate petition for certiorari has been filed today by Lorillard Tobacco Company; Brown & Williamson Tobacco Corporation; R.J. Reynolds Tobacco Company; Philip Morris Incorporated; and United States Tobacco Company, who were also parties to the consolidated appeals below.

RULE 29.6 STATEMENT

The parent of Petitioner of Altadis U.S.A. Inc. is Altadis, S.A. (a public held company).

The parent of Petitioner General Cigar Co., Inc. is General Cigar Holdings, Inc.

The parent of Petitioner John Middleton, Inc. is Bradford Holdings, Inc.

The parent of Petitioner Lane Limited is Cigarette Manufacturers Supplies Inc.

Petitioner L.J. Peretti Co., Inc. does not have any parent or publicly held company owning 10% or more of its stock.

The parent of Petitioner Swedish Match North America, Inc. is Swedish Match A.B. (a public held company).

The parent of Petitioner Swisher International, Inc. is Swisher International Group Inc.

In the Supreme Court of the United States

ALTADIS U.S.A. INC., AS SUCCESSOR TO CONSOLIDATED CIGAR CORPORATION AND HAVATAMPA, INC.; GENERAL CIGAR CO., INC.; JOHN MIDDLETON, INC.; LANE LIMITED, AS SUCCESSOR TO TOBACCO EXPORTERS INTERNATIONAL (USA) LTD.; L.J. PERETTI CO., INC.; SWEDISH MATCH NORTH AMERICA, INC.; SWISHER INTERNATIONAL, INC.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully request that this Court issue a writ of certiorari for review of the judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 218 F.3d 30 (1st Cir. 2000). *See* Petition Appendix ("Pet. App.") 1a-50a. The opinion of the district court is reported at 84 F. Supp. 2d 180 (D. Mass. 2000). *See id.* at 51a-99a.

JURISDICTION

The ruling of the Court of Appeals was entered on July 17, 2000. *See* Pet. App. 1a-50a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The challenged regulations of the Massachusetts Attorney General, which are codified at 940 C.M.R. 22.00, are set out verbatim in the Appendix to this Petition. *See* Pet. App. 100a-111a.

The First Amendment to the United States Constitution provides in relevant part: "Congress shall make no law . . . abridging the freedom of speech . . . ."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

STATEMENT OF THE CASE

Petitioners respectfully refer the Court to the Statement of the Case in the petition for a writ of certiorari to the First Circuit regarding the same consolidated judgment filed on this date by Lorillard Tobacco Company, Brown & Williamson Tobacco Corporation, R.J. Reynolds Tobacco Company, Philip Morris Incorporated, and United States Tobacco Company ("Cigarette and Smokeless Tobacco Manufacturers' Petition").

REASONS FOR GRANTING THE WRIT

Petitioners, who are manufacturers and a retailer of cigars, adopt the reasoning in Section II of the Reasons for Granting of the Writ in the Cigarette and Smokeless Tobacco Manufacturers' Petition, and note that this reasoning applies with at least equal force to cigar advertising.

CONCLUSION

For the reasons stated in the Cigarette and Smokeless Tobacco Manufacturers' Petition, this petition for writ of certiorari should be granted as well.

Respectfully submitted,

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